IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 335 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

SHANKERLAL M SHARMA

Versus

FACTORY MANAGER

Appearance:

1. Special Civil Application No. 335 of 1992

MR YN OZA for Petitioner No. 1

MR KN RAVAL for Respondent No. 1-2

MS PJ DAVAWALA for Respondent No. 1

NOTICE UNSERVED for Respondent No. 2

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 03/07/2002

ORAL JUDGEMENT

1. In this petition, the petitioner has challenged the judgment and order passed by the Industrial Tribunal dated Nil October, 1991 in appeal filed by the respondent

being Appeal (I.C.) No.59/1988.

1.1. Few facts that can be narrated giving rise to this petition are as under :-

1.2. The petitioner was serving as a Junior Assistant in the New Swadeshi Mills since 1974 on permanent basis. He worked in that capacity till 1984. According to the petitioner on 17th February, 1984 his service was terminated without following the due procedure and without giving him any prior notice. The said order of termination came to be challenged by the petitioner by filing application No.T-177/1984 in the Labour Court at Ahmedabad. The said application was filed against the factory manager of the New Swadeshi Mills, Ahmedabad. It appears from the record of this petition that the said mill was taken over by the Gujarat State Textile Corporation under the provisions of Gujarat Closed Textile Undertakings (Nationalization) Act, 1986 in view of the fact that the said mill was closed down in April, 1984. The award of the Labour Court shows that upon this development taking place, notice was issued to the present respondent, and pursuant to the said notice the respondent had appeared in the proceedings. However, neither any written statement was filed on its behalf nor any witness was examined by it. Ultimately, the Labour Court upon appreciating the evidence adduced before it came to the conclusion that the order of termination passed by the Swadeshi Mill was illegal and it was required to be quashed. The Labour Court therefore, passed the award directing reinstatement of the petitioner with continuity of service on his original post with full backwages. The said award of the Labour Court is dated 22nd March, 1988.

2. Having been aggrieved by the award passed by the Labour Court the respondent preferred the aforesaid appeal before the Industrial Court, Ahmedabad. The Industrial Court, by referring to the various provisions of the Act and in particular the provision of Section 5 and 11 came to the conclusion that the present respondent namely the Gujarat State Textile Corporation which had taken over the erstwhile Swadeshi Mill Company was not liable to discharge the liabilities of the New Swadeshi Mill Company, and therefore, the Industrial Court allowed the appeal and set-aside the award passed by the Labour Court. Hence, this petition.

3. Mr.Shivang Shukla, learned counsel for the petitioner has submitted that since the respondent had taken over the erstwhile Company, it was liable to

reinstate the petitioner and to pay to him all the benefits awarded to him under the aforesaid award. He has further submitted that the Industrial Court while allowing the appeal of the respondent has not at all taken into consideration the fact that the Labour Court had held the termination of service of the petitioner to be illegal and for that reason it had passed an order of reinstatement. He lastly submitted that even if the Industrial Court has held that so far as the present respondent is concerned the petitioner has no right against it, the fact remains that by virtue of the order of the Labour Court whatever the rights that have accrued in his favour can be satisfied by lodging appropriate claim with the Commissioner of Payment appointed under the Act, for which appropriate direction is required to be given by this Court.

4. Mrs.P.J. Davawala the learned counsel for the respondent has drawn my attention to the various provisions of the Act. She has submitted that so far as the present respondents are concerned they are not liable to satisfy the award. She has first referred to the definitions of "appointed day" and "specified textile undertaking" i.e. under clause - (a) of Section 2 and under clause (i) of Section 2 respectively. They are as follows :-

SECTION 2 (a)

"appointed day" means the 8th day of November, 1985;

SECTION 2(i)

"specified textile undertaking" means a textile undertaking specified in the First Scheduled to this Act.

She has also relied on the provisions of Section 5 of the Act which dealt with liability of the owner for certain liabilities which came into existence prior to the appointed day. Section 5 reads as follows :-

SECTION - 5

"Owner to be liable for certain prior liabilities

(1) Every liability of the owner of the specified textile undertaking in respect of nay period prior to the appointed date, shall be the liability of such

owner and shall be enforceable against him and not against the State Government or the Corporation.

(2) For the removal of doubt, it is hereby declared that,-

(a) save as otherwise expressly provided in this section or in any other section of this Act, no liability, in relation to the specified textile undertaking in respect of any period of the appointed ay, shall be enforceable against the State Government or the Corporation,

(b) no liability of the specified textile undertaking or any owner thereof for the contravention, before the appointed day, of any provision of law for the time being in force, shall be enforceable against the State Government or the Corporation."

Lastly, she has drawn my attention to the provisions of Section 11 which deals with the employment of the Employees of the Textile Company which has been taken over by the respondent. Section 11 reads as under:-

SECTION - 11

"Employment of certain employees,-- Where service of a person who is a workman within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), and who has been immediately before the appointed day, employed in the specified textile undertaking, are in the opinion of the Corporation necessary having regard to the requirements of the units of the Corporation formed as a result of reorganisation and reconstruction of specified textile undertakings, he shall become, from the date of his appointment by the Corporation, an employee of the Corporation and shall hold office or service in the Corporation with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such specified textile undertaking had not been transferred to, and

vested in, the Corporation, and continue to do so unless and until his employment in such Corporation is duly terminated or until his remuneration and terms and conditions of employment are duly altered by the Corporation.

(2) Where services of a person who is not a workman within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), and who has been, immediately before the appointed day, employed in the specified textile undertaking, are in the opinion of the Corporation necessary having regard to the requirements of the units of the Corporation formed as a result of reorganisation and reconstruction of specified textile undertaking he shall become, from the date of his appointment by the Corporation, an employee of the Corporation and shall hold office or service in the Corporation on such terms and condition of employment as may be determined by the Corporation.

(3) (a) The services of every person employed by the owner before the appointed day shall stand terminated-

(i) On the designated date if such person is not employed before that date by the Corporation under sub-section (1) or (2), and

(ii) On the date of his appointment if such person is employed before the designated date by the Corporation under sub-section (1) of (2),

(b) A person whose services stand terminated under sub-clause (i) of clause (a) shall not be entitled to claim employment in the Corporation as of right.

4.1. She submitted that all the aforesaid provisions of the Act clearly show that so far as the present respondent is concerned there is no liability and the petitioner cannot claim any benefit from them. She, therefore, submits that the present petition deserves to

be dismissed.

4.2. From the record of the petition, it appears that even G.S.T.C. faced severe official crunch and it ultimately came to be wound up and now all the assets of the undertakings of the G.S.T.C. has come in possession of the Official Liquidator. He has been also, therefore, joined as respondent in this petition.

5. I have carefully considered the submissions of the rival parties. A conjoint reading of the aforesaid provisions of the Act clearly shows that whatever liabilities that existed prior to the appointed day in respect of the salary etc., of the workmen concerned, by virtue of provisions of Section 5 that did not pass on to the present respondent i.e. G.S.T.C. upon its taking over the concerned specified textile undertaking. These liabilities remained that of the erstwhile owner. In other words whatever liabilities that existed prior to the appointed day of the aforesaid nature of the specified textile undertaking remained to be such and they did not pass on to the present respondent.

5.1. Further it may be noted here that so far as Section 11 is concerned it states that on the appointed day unless the respondent desired to continue with it the service of the employees of the erstwhile owner will stand statutorily terminated and they would be paid all the benefits such as retrenchment compensation, gratuity, pension etc., from the amount paid to the erstwhile owner by way of compensation. The Industrial Court has heavily relied on these provisions and has come to the conclusion that the award passed by the Labour Court deserves to be quashed and set-aside.

The Division Bench of this Court in the decision rendered in the case of Nathubhai Virabhai v. The Manager, New Swadeshi Mills Ltd., in Special Civil Application No.5774 of 1989 dated 30th August, 1989 has observed as under:-

"In view of the aforesaid statutory provisions, therefore, it is obvious that under the Nationalization Act, a clean slate is given to the Corporation when the nationalized units vested in it. Even the then existing employees of the textile undertakings would get their services statutorily terminated subject to the choice given to the Corporation to employ them if it so chooses. Therefore, there is no automatic transfer of employment of the employees of the

nationalized units after the appointed day, to the second respondent. The Corporation is not liable to answer the claim for back wages. It would be the liability of the erstwhile owners."

5.2. At this juncture, it may be noted that so far as the Industrial Court is concerned nowhere in this judgment it has dealt with the issue whether the termination of the service of the petitioner was valid and justifiable. It has merely focused its attention only on the question whether the present respondents are liable to satisfy the award. Having found answer in the negative it has allowed the appeal of the respondents and set aside the award. So far as the erstwhile owner is concerned, which was party to the proceedings before the Labour Court has not at all challenged the award of the Labour Court and qua it, the same has become final. In view thereof, it can be said that the finding with regard to the termination order being illegal has become final vis-a-vis the erstwhile owner. So far as the conclusion reached by the Industrial Court with regard to the fact that the present respondents are not responsible to satisfy the liabilities of the erstwhile owner, I am totally in agreement with it. However, the fact remains that since it has not at all dealt with the issue regarding illegal termination of the service of the petitioner, I have to accept the finding of the Labour Court.

6. So far as the petitioner is concerned, had he been in the employment of the erstwhile owner, his service would have been terminated on the appointed day i.e. on 8th November, 1985 unless the respondent had opted to continue with it. He therefore, does not have any right of reinstatement. Therefore, it can be said that he could have been in the employment with effect from 17th February, 1984 i.e. the date of the termination of his service till 8th November, 1985 that is appointed date, as on the appointed day his service would have been statutorily terminated. In view thereof, whatever monetary benefits that have accrued to the petitioner between 17th February, 1984 to 9th November, 1985 by way of backwages, retrenchment, compensation, etc., he would have his right to claim it from the erstwhile owner. Section 15 of the Act provides for lodging the claim before the Commissioner. The petitioner therefore, has remedy in the nature of lodging the claim with the Commissioner in accordance with Section 15 of the Act. It however appears, that the period of lodging such claim as prescribed under this Section is 30 days from the specified date which can be

extended by a period of further 30 days by the Commissioner in case he finds that there was sufficient cause for not preferring the claim within the period of 30 days. To overcome this difficulty, particularly when the petitioner had approached this Court by way of this petition it is desirable to give appropriate direction to the Commissioner of the Payments under the Act to entertain the claim of the petitioner on its merits and decide the same in accordance with law.

7. In view of the aforesaid discussion, this petition is partly allowed with a clarification that so far as the present respondents are concerned the petitioner has no right or claim against them. However, the petitioner would be entitled to lodge his claim for the period between 17th February, 1984 to 8th November, 1985 with regard to the monetary benefits which he is entitled to receive from the erstwhile owner before the Commissioner of the Payments under the Act and as and when such claim is made the Commissioner of Payments shall entertain the same on its merits.

The petition, therefore, stands partly allowed. Rule is made absolute accordingly, with no order as to costs.

3.7.2002. [AKSHAY H. MEHTA, J.]

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